IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 803 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K D CONSTRUCTION

Versus

SABARKANTHA JILLA PANCHAYAT

Appearance:

1. Civil Revision Application No. 803 of 2000

MR DP KINARIWALA for Petitioner No. 1

SANJAY R PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 17/10/2001

ORAL JUDGEMENT

1. Heard. Mr. Sanjay Patel, learned counsel for Respondent No.1 Sabarkantha Jilla Panchayat waives

service of rule.

2. This Civil Revision Application under section 115 of the Civil Procedure Code is directed against order dated 20-7-2000 passed in Special Civil Suit No. 94 of 1999 by Learned Civil Judge (S.D.) at Himatnagar, Sabarkantha district, below application Exhibit-3.

3. The say of the petitioner is, that the petitioner (original petitioner) filed application under Section 20 (1) of the Indian Arbitration Act, 1940 (for the short "Act") and prayed for relief of filing of Arbitration Agreement No. 8-2/477 of 1978-79 executed between the parties; and also prayed for referring the disputes arising between the petitioner and respondent to the Arbitrator to be appointed by the Court under Section 20 (4) of the Act.

4. The petitioner affixed Court Fees Stamp of Rs.20/- on the petition. It may be noted at the outset that the proceedings under Arbitration Act are in the nature of application and they are to be numbered and tried as suit under S.S. (2) and that is how application under Section 20 (1) of the Act filed by petitioner came to be numbered as Special Civil Suit.

5. It is stated by learned counsel appearing for the petitioner as well as Respondent No. 1 District Panchayat that, the Court raised a query as regards the affixation of Court Fees of Rs.20/- on the petition, stating that the Court Fees paid was insufficient, leading the petitioner to file application (Exhibit-3) stating that the Court fee stamp of Rs.20/- affixed on the petition is legal, proper and sufficient and that no further Court fee is liable to be paid by the petitioner.

6. Learned Civil Judge after hearing the counsel for the parties dismissed the application (Ex. 3) with cost quantified at Rs.500/- for each of the defendants. There is no further direction in the impugned order requiring the plaintiff to pay additional/deficient Court fees.

7. It is not disputed that the proceedings before the Civil Court at Himatnagar are in the nature of application under section 20 (1) of the Act, and relief claimed therein is for filing of the Arbitration Agreement and for reference of the disputes between the parties arising under/ out of the agreement for resolution, through the arbitration.

8. In the application under Section 20 (1) what has

been enumerated by the petitioner is the claim arising between the parties under/out of the agreement. Looking to the nature of proceedings there is no question of considering grant or otherwise of any of the claims enumerated in the petition under Section 20 (1) of the Act, by the Civil Court.

9. The present application under Section 20 (1) of the Act is filed in year 1989 in the Court of Civil Judge (S.D.) at Ahmedabad (Rural) at Narol, district Ahmedabad. It is stated by the learned counsel appearing for the parties that, thereafter this application came to be transferred to Civil Judge (S.D.) at Gandhinagar. The petitioner filed an application for return of the petition (plaint) for presentation to the proper Court as the respondent District Panchayat, Sabarkantha contended that the Civil Court at Gandhinagar did not have territorial jurisdiction, and that, the cause of action for purpose of filing petition under Section 20 of the Act accrued within the territorial jurisdiction of the Court at Himatnagar, district Sabarkantha. Thereafter the petition (plaint) was returned to the petitioner for being presented to the Court of proper jurisdiction, namely Civil Court at Himatnagar.

10. Entry No. 18 of Schedule-II of Bombay Court Fees Act, 1959 deals with the proper Court Fee payable on the application under Arbitration Act, 1940, Succession Act, 1925 etc. According to Entry 18(A) for the proper Court Fee payable on the application under Section 20 of the Arbitration Act, 1940 is Rs.20-00. There is an amendment by Gujarat Act No. XII of 1998 by which the Court Fee payable on the application under Section 20 of the Arbitration Act, 1940 came to be raised to Rs.50-00.

11. In the year 1989 when application under Section 20 of the Act came to be instituted, proper Court Fee payable was Rs.20/- as per Entry-18A of Schedule-II of the Bombay Court Fee Act, 1959.

12. Mr. Sanjay Patel, learned counsel for Respondent No.1 does not dispute the proposition that proper Court Fee payable on the application under Sub Section (1) of Section 20 of the Arbitration Act, 1940 would be Rs.20/when the application came to be instituted in the year 1989, and proper Court Fee payable came to be revised to Rs.50-00 in the year 1995.

13. I am of the view that, this is a fit case where the interference under Section 115 of the CPC is called for as the Court below has acted in exercise of its

jurisdiction illegally. The above discussion would reveal that the order dated 20-7-2000 dismissing petitioner's application Exhibit-3 is per se illegal and deserves to be set aside.

14. In the result, present Revision Petition succeeds. The order dated 20-7-2000 passed in Application Exhibit-3 in Special Civil Suit No. 94 of 1997 by Learned Civil Judge (S.D.) at Himatnagar, Sabarkantha district, is hereby quashed and set aside. Rule made absolute to the aforesaid extent. No order as to costs.

Dt: 17-10-2001 (N.G. Nandi, J)

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